IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

WP(C).No. 4234 of 2007(D)

PETITIONER:

V.V.SANTHOSH, PARTNER,
M/S.TRAVANCORE MATS & MATTING COMPANY,
P.O.BOX-5, CHERTHALA, PIN-688 524.

BY ADV. SRI.P.A.AUGUSTIAN
SRI.V.K.SATHYANATHAN

RESPONDENTS:
---

1. THE UNION OF INDIA REPRESENTED BY
THE SECRETARY, MINISTRY OF FINANCE,
(DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI-110 001.

2. ADDITIONAL DIRECTOR GENERAL,
DRI DELHI ZONAL UNIT, NEW DELHI-3.

3. SETTLEMENT COMMISSION,
PRINCIPAL BENCH, R.NO.345-363,
3RD FLOOR, HOTEL SAMRAT, KOUDILYA MARG,
CHANAKYAPURI, NEW DELHI.

4. THE COMMISSIONER OF CUSTOMS (EXPORTS),
JAWAHAR CUSTOMS, HOUSE, NHAVA SHEVA RAIGAD,
MAHARASHTRA.

5. SHRI.SANJAY BHANDARI,
PROPRIETOR, M/S.HISTORY LOGISTICS,
LG-1 HARSHA BHAVAN, E-13/29, MIDDLE CIRCLE,
CANNAUGHT PLACE, NEW DELHI-110 001.

R1 TO R4 BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG
R5 BY SRI.P.V.JAYACHANDRAN
SRI.M.S.SAJEEV KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.4234/07

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE RECEIPT DATED 5.9.04 EVIDENCING PAYMENT OF 70 LAKHS.

EXT.P2: TRUE COPY OF THE JUDGMENT DATED 6.3.06.

EXT.P3: TRUE COPY OF THE JUDGMENT DATED 5.4.06.

EXT.P4: TRUE COPY OF THE LETTER DATED 18.4.06 EVIDENCING PAYMENT, EXECUTION OF BANK GUARANTEE, PROVISIONAL DUTY BOND AND INDEMNITY BOND.

EXT.P5: TRUE COPY OF THE RELEVATN PAGES OF SCN NO.DZU/HL 23/79/05 DATED 23.8.06.

EXT.P6: TRUE COPY OF THE REJECTION ORDER NO.452/CCUS/06/SC DATED 28.4.06.

EXT.P7: TRUE COPY OF THE LETTER DATED 12.9.06.

EXT.P8: TRUE COPY OF THE REPLY TO SHOW CAUSE NOTICE DATED 22.12.06.

RESPONDENTS; EXHIBITS:

EXT.R1(a): TRUE COPY OF THE ORDER DATED 28.12.06 PASSED BY THE 3RD RESPONDENT.

EXT.R1(b): TRUE COPY OF THE ORDER DATED 14.2.07 PASSED BY THE 3RD RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.4234 OF 2007

Dated this the 30th day of March, 2007

JUDGMENT

The petitioner moved this Court by filing W.P(C).5047/06 in the backdrop of seizure of a Mercedes Benz car, which was imported into India. He sought for a direction to release that vehicle pending adjudication proceedings. This Court, after ascertaining the instructions in that regard from the Assistant Solicitor General, issued Ext.P2 judgment, directing that if the petitioner furnishes bank guarantee for an amount of Rs.28,80,292/- and furnishes a bond agreeing to pay the balance differential duty on finalisation of adjudication proceedings, the vehicle would be released provisionally. The adjudication proceedings were also directed to be completed in a time bound manner. Ext.P3 appeal at the instance of the revenue against that judgment failed.

2. It appears that the petitioner's case as of now, is that he has furnished bank guarantee, but was also compelled to deposit

certain amounts. But the fact remains that as of now, he is in possession of the vehicle. It is also the admitted situation that the petitioner is also party to proceedings before the Settlement Commission and that proceedings before that Commission are going on. The quality of proceedings before the Settlement Commission would obviously be quite different from a pure adjudicating proceedings. Under such circumstances, Pending of this writ petition itself would be an embargo to finalisation of proceedings before the Settlement Commission. Not only that, any over payment, under payment, adjustments and also as regards as to who would be liable to pay, are matters which could and would attain appropriate attention of the Settlement Commission. It would also be inappropriate to assume that Exts.P2 and P3 would escape notice of the Settlement Commission. Under such circumstances, pendency of this writ petition would only create bottlenecks and further proceedings before the Settlement Commission. Hence, this writ petition is dismissed. However, the petitioner is at liberty to raise all his contentions before the Settlement Commission.

Following this judgment, it will be open to the Settlement Commission also to consider whether the vehicles in question could be permitted to be released to the 5th respondent. This is a matter that would gain attention of the Settlement Commission on the basis of the application of the petitioner already made to the Settlement Commission.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.